ARGUMENT OF DANIEL C. FINN.

To the Committee on Indian Affairs of the House of Representatives.

Mr. Chairman and Gentlemen of the Committee :

I appear before your committee, by request, as one who, after an intimate acquaintance of three years, feels a deep interest in the future welfare of the Indian people who inhabit the Indian Territory.

These people have adopted civilized customs, made considerable progress in education, a majority are members of Christian churches, are cultivating habits of industry, and will in time become successful and prosperous agriculturists and tradesmen.

This people, once numerous, powerful and truly independent, were found by our ancestors in the quiet and undisturbed possession of an ample domain.

They have been gradually sinking beneath our superior policy, our arts, and our arms ; have yielded up their lands by successive treaties, each of which has contained a solemn pledge and guaranty of the residue, until they retain no part of their formerly extensive country.

I will not dwell upon the familiar history of this people while in their former home east of the Mississippi.

It is sufficient to say that the covetous eye of the slaveholder viewed their beautiful and rich valleys, who raised the cry that these Indians were in the way, and stopped the progressive wave of civilization.

The pressure brought to bear upon them was so great as to "let slip the dogs of war," and they were compelled to surrender their homes and all they held sacred to the

Southern planter, for sugar, cotton, and tobacco plantations.

The best interests of a free and noble people were sacrificed to appease the insatiate demands of that damnable institution, slavery, with cotton as king.

But forty years have passed away since this people passed over the "Father of Waters" to the country set apart for them, and which they now hold by treaties, each of which contains a solemn guarantee that they and their descendants shall have it for a perpetual home.

These treaties were based on a law of Congress, authorizing the President of the United States to convey the land stipulated therein, for a recognized valuable consideration, by letters patent.

The Chief Magistrate of our nation pledged the faith and honor of the nation that these lands should be theirs, a secure dwelling place, as long as grass grows and waters run.

Relying upon the faith of that Government, which boasts of its freedom, equality and justice to all men, without regard to race, color, or former condition, they have long since laid aside the habits and customs of their fathers and adopted those of their white neighbors.

They now have governments truly republican both in form and spirit, and are educating their people to love the institutions of our fathers, and they themselves are the best judges and should be allowed to determine when to incorporate these governments with that of the United States.

And now, sir, referring to treaties and laws, I will show their rights to these lands, to the management of their own local affairs, and to the privilege of self-government, free from the encroachment of those who always see superiority of soil, a delightful climate and landscape beauty where Indians dwell.

I call your attention to an act of Congress, approved May 28, 1830, which reads as follows:

"*Be it enacted, &c.*, That it shall and may be lawful for the President of the United States to cause so much of any Territory belonging to the United States west of the river Mississippi, not included in any State or organized Territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations as may choose to exchange the lands where they now reside, and remove there; and to cause each of said districts to be so described, by natural or artificial marks, as to be easily distinguished from every other.

SEC. 2. *And be it further enacted*, That it shall and may be lawful for the President to exchange any or all of such districts, so to be laid off and described, with any tribe or nation of Indians now residing within the limits of any of the States or Territories and within which the United States have existing treaties, for the whole or any part or portion of the Territory claimed and occupied by such tribe or nation, within the bounds of any one or more of the States or Territories, where the land claimed and occupied by the Indians is owned by the United States, or the United States are bound to the State within which it lies to extinguish the Indian claim thereto.

SEC. 3. *And be it further enacted*, That in the making of any such exchange, or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made that the United States will forever secure and guarantee to them, and their heirs and successors, the country so exchanged with them; and, if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, that such lands shall revert to the United States if the Indians become extinct or abandon the same.

SEC. 6. *And be it further enacted*, That it shall and may be lawful for the President to cause such tribe or nation to be protected at their new residence against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever."

After the passage of the above recited act the President of the United States proceeded to execute the same by treaty stipulations.

The treaty with the Creeks, of 1830, article 14, says:

"The Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves, so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them; and the United States will also defend them from the unjust hostilities of other Indians, and will also, as soon as the boundaries of the Creek country west of the Mississippi are ascertained, cause a patent or grant to be executed to the Creek tribe, agreeably to the third section of the act of Congress of May 28, 1830, entitled 'an act to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi.'"

The second article of the treaty of 1833 with the Creeks clearly defines the boundary of their country, and the third article reads as follows:

"The United States will grant a patent, in fee-simple, to the Creek Nation of Indians for the land assigned said nation by this treaty or convention, whenever the same shall have been ratified by the President and Senate of the United States; and the right thus guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation and continue to occupy the country hereby assigned them."

In the treaty with the Cherokees, made in 1835, in pursuance of the aforesaid act of Congress, the first and second sections define the boundaries, while article 3d contains the following:

"The United States also agree that the lands above ceded by the treaty of February 14, 1833, including the outlet, and those ceded by this treaty, shall all be included in one patent, executed to the Cherokee Nation of

Indians by the President of the United States, according to the provisions of the act of May 28, 1830."

Article 5th of the same reads as follows:

"The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory."

The Government of the United States has made similar treaties with the Choctaw Nation containing the same guaranties.

In accordance with the heretofore recited acts and treaties, the President of the United States executed the following Letters Patent to the Cherokee domain:

Letters Patent to Cherokee Domain.

UNITED STATES OF AMERICA.

To all whom these presents shall come, greeting:

Whereas by certain treaties made by the United States of America with the Cherokee nation of Indians, of the 6th of May, one thousand eight hundred and twenty-eight, the 14th of February, one thousand eight hundred and thirty-three, and the 29th of December, one thousand eight hundred and thirty-five, it was stipulated and agreed, on the part of the United States, that in consideration of the promises mentioned in the said treaties, respectively, the United States should guarantee, secure, and convey, by patent to the said Cherokee Nation, certain tracts of land; the description of which tracts and the terms and conditions on which they were to be conveyed and set forth in the second and third articles of the treaty of the 29th of December, one thousand eight hundred and thirty-five, in the words following, that is to say:

ART. 2. "Whereas, by the treaty of May 6, one thousand eight hundred and twenty-eight, and the supplementary treaty thereto of February 14, one thousand eight hundred and thirty-three, with the Cherokees west of the Mississippi, the United States guaranteed and secured to

be conveyed by patent to the Cheerokee Nation of Indians the following tract of country: beginning at a point on the old western territorial line of Arkansas Territory, being twenty-five miles north from the point where the territorial line crosses the Arkansas river; thence running from said north point south on the said territorial line, where said territorial line crosses Verdigris river; thence down said Verdigris river to the Arkansas; thence down said Arkansas to a point where a stone is placed, opposite the east or lower banks of Grand river, at its junction with the Arkansas; thence running south forty-four degrees west one mile; thence in a straight line to a point four miles northerly from the mouth of the North Fork of the Canadian; thence along the said four-mile line to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to a point on the Arkansas where the eastern Choctaw boundary strikes said river, and running thence with the western line of Arkansas Territory as now defined, to the southwest corner of Missouri; thence along the western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to the Grand river; thence up said Grand river as far as the south line of the Osage reservation extended, if necessary; thence up and between said south Osage line, extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line will make seven millions of acres within the whole described boundaries.

"In addition to the seven millions of acres of land thus provided for and bounded, the United States further guarantee to the Cherokee Nation a perpetual outlet west and a free and unmolested use of all the country west of the western boundary of said seven millions of acres as far west as the sovereignty of the United States and their right of soil extend: *provided, however*, That if the saline or salt plain on the western prairie shall fall within said limits, prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees, and letters patent shall be issued by the United States as soon as practicable for the land hereby guaranteed. And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity

of land for the accomodation of the whole nation on their removal west of the Mississippi, the United States, in consideration of the sum of five hundred thousand dollars, therefore hereby covenant and agree to convey to the said Indians and their descendants, by patents in fee-simple, the following additional tract of land situated between the west line of the State of Missouri and the Osage reservation, beginning at the southeast corner of the same, and runs north along the east line of the Osage lands fifty miles to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds, the same shall be reserved and excepted out of the lands above granted, and a pro rata reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

ART. 3. "The United States also agree that the lands above ceded by the treaty of February fourteen, one thousand eight hundred and thirty-three, including the outlet and those ceded by this treaty, shall be included in one, executed to the Cherokee Nation of Indians by the President of the United States according to the provisions of the act of May twenty-eight, one thousand eight hundred and thirty.

"It is, however, agreed that the military reservation at Fort Gibson shall be held by the United States; but should the United States abandon said post, and have no further use for the same, it shall revert to the Cherokee Nation. The United States shall always have the right to make and establish such post and military roads and posts in any part of the Cherokee country as they may deem proper for the interest and protection of the same, and the free use of as much land, timber, fuel, and materials of all kinds for the construction and the support of the same as may be necessary; provided, that if the private rights of individuals are interfered with, a just compensation therefore shall be made."

And whereas the United States have caused the said tract of seven millions of acres, together with the said perpetual outlet, to be surveyed in one tract, the boundaries whereof are as follows: beginning at a mound of

rocks four feet square at base and four and a half feet high, from which another mound of rocks bears south one chain, and another mound of rocks bears west one chain, on what has been denominated the old western territorial line of Arkansas Territory, twenty-five miles north of Arkansas river; thence south twenty-one miles and twenty-eight chains to a post on the northeast bank of the Verdigris river, from which a hackberry, fifteen inches in diameter, bears south sixty-one degrees thirty-one minutes east forty-three links, marked C. H. L., and a cottonwood, forty-two inches diameter, bears south twenty-one degrees fifteen minutes east fifty links, marked C. R. K. L.; thence down the Verdigris river, on the northeast bank, with its meanders, to the junction of Verdigris and Arkansas rivers; thence from the lower bank of Verdigris river on the north bank of Arkansas river, south forty-four degrees thirteen minutes east fifty-seven chains to a post on the south bank of the Arkansas river, opposite the eastern bank of Neosho or Grand river, at its junctioa with the Arkansas, from which a red oak, thirty-six inches diameter, bears south seventy-five degrees forty-five minutes west twenty-four links, and a hickory, twenty-four inches diameter, bears south eighty-nine degrees east four links; thence south fifty-three degrees west one mile to a post, from which a rock bears north fifty-three degree, east fifty links, and a rock bears south eighteen degrees eighteen minutes west fifty links; thence south eighteen degrees eighteen minutes west thirty-three miles twenty-eight chains and eighty links to a rock, from which another rock bears north eighteen degrees eighteen minutes east fifty links, and another rock bears south fifty links; thence south four miles to a post on the lower bank of the North Fork of Canadian river, at its junction with Canadian river, from which a cottonwood twenty-four inches diameter bears north eighteen degrees east forty links, and a cottonwood fifteen inches diameter bears south nine degrees east fourteen links; thence down the Canadian river, on its north bank to its junction with Arkansas river; thence down the main channel of Arkansas river to the western boundary of the State of Arkansas, at the northern extremity of the eastern boundary of the lands of the Choctaws, on the south bank of Arkansas river, four chains and fifty-four links east of Fort Smith; thence north seven degrees twenty-five minutes west, with

the western boundary of the State of Arkansas, seventy-six miles sixty-four chains and fifty links to the south-west corner of the State of Missouri; thence north on the western boundary of the State of Missouri, eight miles forty-nine chains and fifty links, to the north bank of Cowskin or Seneca river, at a mound six feet square at base and five feet high, in which is a post marked on the south side cor. N. Ch. Ld.; thence west on the southern boundary of the lands of the Senecas, eleven miles and forty-eight chains, to a post on the east bank of Neosho river, from which a maple eighteen inches in diameter bears south thirty-one degrees east seventy-two links; thence up Neosho river, with its meanders, on the east bank to the southern boundary of the Osage lands, thirty-six chains and fifty links west of the southeast corner of the Osages, witnessed by a mound of rocks on the west bank of Neosho river; thence west on the southern boundary of the Osage lands to the line dividing the territory of the United States from that of Mexico, two hundred and eighty-eight miles thirteen chains aud sixty-six links to a mound of earth six feet square at base, and five and a half feet high, in which is deposited a cylinder of charcoal twelve inches long, four inches diameter; thence south along the line of the territory of the United States and of Mexico, sixty miles and twelve chains, to a mound of earth six feet square at base and five and a half feet high, in which is deposited a cylinder of charcoal eighteen inches long and three inches diameter; thence east along the northern boundary of the Creek lands, two hundred and seventy-three miles fifty-five chains and sixty-six links, to the beginning, containing within the survey thirteen million five hundred and seventy-four thousand one hundred and thirty-five acres and fourteen hundredths of an acre.

And whereas the United States have also caused the said tract of eight hundred thousand acres to be surveyed, and have ascertained the boundaries thereof to be as follows: beginning at the southeast corner of Osage lands, described by a rock, from which a red oak, thirty inches diameter, bears south twenty-seven degrees east seventy-six links, and a burr-oak, thirty inches diameter, bears south fifty-nine degrees west one chain; and another burr-oak, thirty inches diameter, bears north eight degrees west one chain and thirty-seven links; and another burr-

oak, forty inches diameter, bears north thirty degrees west one chain and eighty-one links, and running east twenty-five miles, to a rock on the western line of the State of Missouri, from which a post-oak, ten inches diameter, bears north forty-eight degrees thirty minutes east four chains; and a post-oak, twelve inches diameter, bears south sixty-two degrees east five chains; thence north with the western boundary of the State of Missouri, fifty miles, to a mound of earth five feet square at base, and four and a half feet high; thence west twenty-five miles to the northeast corner of the lands of the Osages, described by a mound of earth six feet square at base, and five feet high; thence south along the eastern boundary of the Osage lands, fifty miles to the beginning, containing eight hundred thousand acres.

Therefore, in execution of the agreements and stipulation contained in the said several treaties, the United States have given and granted, and by these presents do give and grant, unto the said Cherokee Nation the two tracts of land so surveyed and hereinbefore described, containing in the whole fourteen millions three hundred and seventy-four thousand one hundred and thirty-five acres and fourteen-hundredths of an acre: to have and to hold the same, together with all the rights, privileges, and appurtenances thereunto belonging to the said Cherokee Nation forever, subject, however, to the rights of the United States to permit other tribes of red men to get salt on the salt plain on the western prairie, referred [to] in the second article of the treaty of the twenty-ninth of December, one thousand eight hundred and thirty-five; which salt plain has been ascertained to be within the limits prescribed for the outlet agreed to be granted by said article, and subject, also, to all the other rights reserved to the United States, in and by the articles hereinbefore recited, to the extent and in the manner in which the said rights are so reserved, and subject also to the condition provided by the act of Congress of the twenty-eighth of May, one thousand eight hundred and thirty, referred to in the above recited third article, and which condition is that the lands hereby granted shall revert to the United States if the said Cherokee Nation becomes extinct or abandon the same.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters

to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the thirty-first day of December, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the sixty-third.

[L. S.] M. VAN BUREN.

By the President:

H. M. GARLAND,
Recorder of the General Land Office.

The same provisions are contained in the Letters Patent granted to the Creeks and Choctaws.

I think, sir, these treaties, laws and patents furnish as strong a title, excepting the mere right to convey, as any in the power of the Government to give, and one that can only fail when the Indians shall cease to exist, or voluntarily abandon their lands, or surrender them to the United States.

Can it be wondered at that these confiding children of the forest, just emerging from ignorance and superstition, should rely upon such promises, pledges and guarantees as they have received from our Government?

Or is it a matter of surprise that their friends should look with apprehension and dread upon such laws, as this bill now being considered before your honorable committee, proposes to repeal?

The bill now under consideration reads as follows:

H. R. 1132.

42d Congress, 2d Session.

In the House of Representatives, January 22, 1872.

Read twice, referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. Shanks, on leave, introduced the following bill:

A BILL repealing acts and parts of acts granting land, and certain privileges in the Indian Territory to railroad companies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections nine and ten of an act entitled "An act granting land to the State of Kansas to aid in the construction of the Kansas and Neosho Valley railroad, and its extension to Red river," approved July twenty-fifth, eighteen hundred and sixty-six; and sections nine and ten of an act entitled "an act granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific railroad and telegraph line, from Fort Riley, Kansas, to Fort Smith, Arkansas," approved July twenty-sixth, eighteen hundred and sixty-six; and so much of sections two and three of an act entitled "an act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific ocean," approved July twenty-seventh, eighteen hundred and sixty-six; and any other sections or parts of sections of said acts, or any other acts or laws which assume to grant any lands within the country known as the Indian Territory, to any railroad company, or to any other corporation, person, or power, or to pledge the United States to the extinguishment of the Indian title to any land within that Territory, or to permit any corporation, person, or power, other than the United States, to purchase land from any Indian nation or tribe within said Indian Territory, be, and the same are hereby, repealed.

I will now briefly call your attention to laws, which seem to me to lay a ruthless hand upon rights which have become vested and sacred under the laws and guarantees just mentioned.

Sections 9th and 10th of an act entitled "an act granting land to the State of Kansas, to aid in the construction of the Kansas and Neosho Valley railroad and its extension to Red river," approved July 25th, 1866, read as follows:

"SECTION 9. *And be it further enacted,* That the same grants of lands through said Indian Territory, are hereby

made as provided in the first section of this act, whenever the Indian title shall be extinguished by treaty or otherwise, not to exceed the ratio per mile granted in the first section of this act. *Provided*, that said lands become a part of the public lands of the United States.

"SECTION 10. *And be it further enacted*, That said Kansas and Neosho Valley Railroad Company, its successors and assigns, shall have the right to negotiate with, and acquire from any Indian nation or tribe authorized by the United States to dispose of lands for railroad purposes, and from any other nation or tribe of Indians through whose lands said railroad may pass, subject to the approval of the President of the United States, or from any company or parties incorporated or authorized for such purposes by such nation or tribe, or which such parties may have acquired under the laws of the United States."

Sections 9th and 10th of an act entitled "an act granting lands to the State of Kansas to aid in the construction of a southern branch of the Union Pacific railroad and telegraph line from Fort Riley, Kansas, to Fort Smith, Arkansas," approved July 26, 1866, are as follows:

"SECTION 9. *And be it further enacted*, That the same grant(s) of lands through said Indian Territory are hereby made, as provided in the first section of this act, whenever the Indian title shall be extinguished by treaty or otherwise, not to exceed the ratio per mile granted in the first section of this act. *Provided*, that said lands become a part of the public lands of the United States.

"SECTION 10. *And be it further enacted*, That said Pacific Railroad Company, southern branch, its successors and assigns, shall have the right to negotiate with, and acquire title to land for railroad purposes, from any Indian nation or tribe authorized by the United States to dispose of lands, and from any other nation or tribe of Indians through whose lands said railroad may pass, subject to the approval of the United States, or from any company or parties incorporated or authorized for such purposes by such nation or tribe, or which such parties may have acquired under the laws of the United States."

Now, sir, to consider the above recited acts as grants conferring vested rights would be a misinterpretation of

law. They merely grant the privilege to buy lands of the Indians, or in the event of a remote and merely possible contingency, to receive the same without consideration.

The acts of Congress confer upon the railroad companies a mere privilege to acquire title to certain lands with the consent of the Indians. They do not vest any title to the lands, for the Government had already parted with the title by issuing patents to the Indians.

A mere privilege is not a vested right. The courts of the United States have repeatedly decided that a privilege might be recalled. A settler under the pre-emption laws of the United States is invested with the privilege of acquiring the Government title to a certain quantity of public land, yet the courts have repeatedly held that until he has actually paid for it he has acquired no vested right, and that even after settlement and cultivation, the tract claimed may be granted to another by act of Congress, or that the statute granting the privilege may be repealed.

These statutes clearly acknowledge the title to be in the Indians, for if they were not the owners they would not have the right to sell, and if they have the right to sell, the Government plainly has not the right to grant. The treaties prohibit the Indians from selling to any party except the United States.

Does the Government intend by these acts to delegate its power to purchase lands of Indians to these railroad companies, with an accompanying pledge to aid them in the extinguishment of the Indian title?

If so, and the Indians are unwilling to sell, is there also delegated the privilege to overreach, coerce, and crush out those whose independent right it is to refuse to sell even to the United States?

In order to understand the damaging effects of these acts, I will refer to those sections which give the proposed grants or privileges, and show in detail what they contemplate.

These grants are all made on the condition, that if any of the odd sections are otherwise disposed of, the company has the right to select the nearest section thereto, which not only allows it to take the odd numbers, but the even also.

Section 1 of the first-named act grants to the Kansas and Neosho Valley Railroad Company twenty sections, or 12,800 acres per mile.

The length of the road in the Indian Territory being about 291 miles, gives an aggregate of 3,724,800 acres.

Section 1 of the second-named act grants to the Pacific Railroad Company, southern branch, ten sections, or 6,400 acres per mile. The length of this road is 125 miles through the Territory, and gives an aggregate of 800,000 acres.

Section 3 of an act approved July 27, 1866, granting lands to the Atlantic and Pacific Railroad Company, and to the Van Buren, Arkansas, branch of the same, grants forty sections, or 25,600 acres per mile. The length of road and branch, as near as can be ascertained, is 700 miles at least through the Territory, which gives an aggregate of 17,920,000 acres.

Besides these, there is the thirty-fifth parallel railroad company, which claims six sections per mile for 350 miles, giving 1,244,000 acres.

You will see, gentlemen, that the number of acres claimed by the Atlantic and Pacific railroad is 25,600 acres per mile, which would sell without any railroad for at least $5 per acre, and this would make $128,000. The cost of building the railroad will not exceed $25,000 per mile, which gives a nett profit of $103,000 per mile, besides owning the finished road.

Is it anything remarkable that these companies are in haste to have the Indian title speedily blotted out, especially since it has passed into an adage that "corporations have no souls?"

Aggregating these pretended grants and claims, the total amount of land directly grasped at by railroad companies in the Indian Territory we find to be 23,688,800 acres.

Now let us carry this estimate a little further, that we may see more clearly how this prospectively affects the citizens of this Indian Territory.

The whole area is estimated to contain 45,440,000 acres. By referring to Colton's estimate it will be seen that "the San Bois, Witchita, and Boston mountains, and their spurs, make one-third of this country a dreary desert of barren rocks and cliffs not susceptible of cultivation." Adding this to that claimed by the railroads, we have, claimed by the railroads prospectively, 23,688,800 acres; waste land, 15,146,666 acres, making a total of 38,835,466 acres to be deducted from 45,440,000 acres, the entire area, which leaves 6,604,534 acres as the prospective home of the civilized Indians when their title is extinguished.

There are at present, it is believed, not less than 90,000 lawful inhabitants of the Indian Territory.

In order to give these people 160 acres per capita, as it is proposed in each territorial bill yet presented, it will require 14,400,000 acres.

From what source now does our Government propose to furnish the 7,795,466 acres which the Indian Territory fails to supply? (to say nothing of the other tribes which the Government has agreed by treaty to locate on lands in this same territory.)

Will it purchase from the railroad companies? Can it in any other way fulfil its pledges, that the Indian Territory shall be the perpetual home of these Indian tribes? It surely will not leave them homeless and landless, for are they not its wards?

Let us now turn our attention more carefully to the relations which the Government sustains to these Indians,

who have paid a consideration for the whole country, and received not only pledges and guarantees, but to-day hold patents, in fee-simple, never to cease until the Indians became extinct, or until the individual tribes voluntarily sell to the United States.

How does this compare with the relations which the Government sustains to these railroad companies, which have paid no consideration, and yet claim as a gratuity these prospective grants, and an actual pledge of our Government to expedite the extinguishment of the Indian title?

Surely these acts could not have received before their passage the attention and discussion which the interests involved demanded.

But it may be urged that these grants are of no present force, and do not therefore affect the Indian tribes until their title becomes extinct.

In reply, I would ask whence this swarm of territorial bills which have been thrust upon the attention of Congress since these acts were passed; and why is the Capitol to-day thronged with men in the interests, directly or indirectly, of these railroad companies, who, by a strange coincidence, work early and late, openly and secretly, with tongue, pen, and purse, to further the passage of *some* territorial bill for the Indian Territory?

How else can these things be explained but upon the hypothesis that the railroad companies hope more speedily in this way to make Congress wipe out with a single stroke the last vestige of Indian title, in order that they may enter at once upon this immense land estate which these acts will then confer, and from which they are only kept by this troublesome Indian title?

The statement has been made that Congress cannot resist the potent railroad influence—the public sentiment which they have industriously created—but must soon open the Indian country.

It is because all these territorial bills are but the legitimate offspring of these so-called railroad grants that the Indians are living in terror, fearing the calamities which assuredly await them should a territorial bill be passed.

They know too well that their good is not consulted—otherwise their consent would first be obtained in accordance with our nation's solemn pledge.

And where, sir, shall the Indian look for relief?

Shall he present his grievances to the President of the United States? He is only the Executive, and has no repealing power.

Shall he turn to the judiciary? The Supreme Court, in the case of the Cherokee Nation *vs.* State of Georgia, has clearly set forth its inability to bring him aid.

Chief Justice Marshall, in delivering the opinion of the Court, (9th Curtis, page 184,) says:

"If it be true that the Cherokee Nation have rights, this is not the tribunal in which these rights are to be asserted. If it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future."

They have one resource left, and that is to the Congress of the United States, for they well know that the law-making power has also the repealing power. Here they rest their case, and ask for justice and right. And shall they ask in vain? Surely Congress will not allow them to be thus robbed!

But it may be asked, would not such repeal interfere with vested rights?

I deny that these acts confer any vested rights. But, as I have said, they confer the privilege to negotiate, and can confer no vested right until the railroad companies have purchased the lands from the Indians, and paid them therefor, subject to the approval of the President of the

United States, and received a patent, which for the first time invests them with a title.

The right of Congress to repeal acts of privilege is well established by the Supreme Court of the United States, in the case of Frisbe *vs.* Whitney, (9 Wallace, page 187,) which was in relation to the privilege of pre-emption before a settler has proved up and paid for his land.

The courts hold "that before such steps are taken, he has nothing but a contingent, personal privilege to become, without competition, the first purchaser of the property, or which he may waive or abandon, during the interval between the institution of the settlement and the consideration nominated in the law, Congress has power to dispose of the land at its pleasure.

It may recall the privilege previously conferred, or invest any one else with the same privilege, or it may make an absolute grant of the land to others with or without consideration.

Since these acts invest no titles to lands in railroad companies, but mere contingent privileges, is it not manifestly within the constitutional power of Congress to repeal them?

Should these privileges be held more sacred because one hundred and fifty men, more or less, are incorporated to monopolize the public domain, and then stretch forth a sacreligeous hand to pillage the defenceless, and break through the barriers that guard our national honor? Should not such effrontry be rebuked by this Congress?

Let me adduce one characteristic fact to show the utter disregard for the interests or even existence of the Indians, manifested by the agents of these railroad companies.

When the Creek government, last October, was menaced by a large faction, armed to overthrow the constitutional laws which had been enacted for their better adaptation to the advanced civilization of the Creeks, and had been

approved by the United States, when bloodshed seemed unavoidable, one of these agents, who, for the last four years has cultivated the friendship of the leaders of this faction and had sought to be their advisor, exultingly exclaimed, "The Creeks are going to fight *sure*, and then we will get their land, and their nationality will be gone to the devil."

What, then, are the vested rights given to these railroad companies in the Indian Territory?

The right of way, not to exceed two hundred feet in width, except at stations, switches, water stations, and crossings of rivers, where the breadth cannot exceed four hundred.

This right they hold by treaty stipulations direct, and it is sustained by the laws of the United States and cannot be questioned, while the same treaties give the privilege to purchase a belt or strip of land not to exceed three miles in width on each side of the road through the Creek, Choctaw, and Chickasaw nations, with which right and privilege the repeal of these acts does not in any way interfere.

Can these companies be invested with any further rights in the Indian Territory without the consent of the Indians?

Has Congress the power to grant, when the title has been in the Indians for the past forty years, and not in the Government of the United States?

This question is well settled by the decisions of the Supreme Court of the United States in the following recited cases:

1st. (13 Peters, page 266,) Wilcox *vs.* Jackson. The court held: That whenever a tract of land has been appropriated to the public use, it it severed from the mass of the public domain, and subsequent laws of sale are not construed to embrace it, though they do not in terms except it."

The court further says: "Now this is appropriation,

for that is nothing more nor less than setting apart the thing for some particular use."

"But we go further and say that whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands, and that no subsequent law or proclamation or sale would be construed to embrace it, or to operate upon it although no reservation was made of it."

2d. (5 Wheat., page 293,) Polk *vs.* Wendell: "Where the State had no title to the thing granted, the grant is void."

3d. (10 Peters, page 662,) Mayor, &c., New Orleans, *vs.* The United States: "It would be a dangerous doctrine to consider the issuing of a grant, as conclusive evidence of a right in the power which issued it. On its face it may be conclusive, and cannot be controverted; but if the thing granted was not in the grantor, no right passes to the grantee."

4th. (1 Black, page 358,) Rice *vs.* Railroad Company: "Legislative grants are not warranties, and the rule of the common law must be applied to them, that no estate passes to the grantee except what was at the time in the grantor."

5th. (7th Wheat., page 27): "Where a State has already granted, by a prior patent, such land is in the adverse seizen of another grantee, and a subsequent patent conveys neither title nor seizen."

It will be thus seen that when lands are once vested by the laws of Congress, by treaties and patents, they are secure from any legislative act of Congress, which cannot legally divest the Indians of their rights.

I deduce another reason why this bill should be passed, suggested by section 17 of a bill now before the Senate Territorial Committee, which is in substance contained in every Territorial bill yet presented.

I quote the section: "That the Secretary of the Interior shall, as early as practicable, cause the lands in the said Territory to be surveyed, and from and after such survey the Indian title shall be deemed and held to be

forever extinguished, and the lands to be public lands of the United States, subject to all grants or pledges heretofore made by acts of Congress. *Provided*, that nothing in this act shall be construed to enlarge, repeal or impair any such grants or pledges heretofore made; and the occupants of said Territory shall be permitted to select lands for themselves, or those they may represent, in severalty, under the regulations hereinafter prescribed."

The design here is unquestionably to extinguish the Indian title *first*, to secure the claims of the railroad companies *next*, and then give the citizens of the Indian Territory the valuable privilege of selecting homes after 23,688,800 acres of the choicest land in the whole Territory has been declared exempt from their selection, even though this exemption may contain their homes, endeared to them by the labors and associations of forty years.

No matter how valuable and extensive his improvements, he must be declared an intruder, and driven out, with no provision to pay him a single dollar for his loss.

If these acts contemplated giving such an immense landed estate, without a consideration, to these railroad companies, embracing the improvements of citizens, their institutions of learning and public buildings, they should certainly be repealed on the ground of justice and right.

If they did not contemplate such gift, they should be repealed because of the unjust advantage sought to be obtained by a false construction.

That this false construction is put upon these acts is evident, since in no bill yet introduced has there been any provision made whatever, from any source to pay for property so claimed.

Let us now sketch the successive steps of this far reaching and deeply plotted scheme.

First. An accumulation of wealth while commanding those who were fighting the battles of our country in her

greatest peril, or as government contractors, gave its originators prestige and influence.

Second. The treaties of 1866 were drawn by these same parties or others in the same interest, and under the guise of friendship, these treaties were recommended to the Indians as calculated to promote their interests,

Third. These same parties or their coadjutors drew the bills, which were hastily driven through Congress by those friendly to the scheme, just at the close of a session, in a way to attract as little attention as possible,

The design was so covert as to be hardly noticed, until since the persistent efforts made to pass territorial bills and compel the consummation. But now the whole design is too patent to be covered up, even by putting on an air of injured innocence.

I cannot conceive for one moment that the Congress of these United States would intentionally pass a law rendering 50,000 people homeless at the instance of these railroad companies. Any such law or action would violate the pledged faith of the Government, and inevitably lead to the extinction of the Indian tribes now prosperously occupying that Territory.

Gentlemen of the committee, there are but four ways by which the Indians of the Territory can lose the title to their heritage—three by their consent and one without it:

1st. By extinction of the tribal relations.

2d. By abandonment of the country.

3d. By selling to the United States.

4th. By mere might or power of the stronger, regardless of all right and justice.

These corporations are operating in the direction of the fourth, since they ignore the consent of the Indians, and lest Congress should seem to favor this method it should repeal these acts under which the railroad companies claim authority, and henceforth leave the Indian to transact his

real estate business with the Government alone, in accordance with the treaties, laws, and patents whose validity has been fully recognized by the legislative departments for forty years. Congress has passed laws from time to time regulating the intercourse with them, and made appropriations for paying the amounts due them, as specified by the express provision of treaties. The judicial department has made full recognition of the validity of the laws and treaties by declaring them to be the supreme law of the land.

These Indians, holding their treaties sacred and inviolate, have lived and prospered under them, advancing step by step in civilization, and making rapid progress in agriculture. They trusted to the assurance of the Government that the civilized tribes should be settled in the Indian Territory. This plan met their approval, for they desired that the entire remnant of a noble race, that God had once placed in possession of all America, should as far as possible be gathered in the Indian Territory. This Territory contains but 71,000 square miles, set apart for the last home of the Indian race.

I claim that the honor and good faith of this our democratic, republican, and Christian Government demands full protection to the Indian in every right guarantied by laws, treaties, and patents, free from the interruption of land monopolies and those who make it a study to swindle the Indian.